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Committee of Experts on International Cooperation in Tax Matters

Report on the first session (5-9 December 2005)

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Note

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Summary

The present report contains the conclusions and recommendations of the first session of the Committee of Experts on International Cooperation in Tax Matters, held at the United Nations Office at Geneva from 5 to 9 December 2005. The Committee, which was established by the Economic and Social Council in its resolution 2004/69, consists of 25 experts appointed in their personal capacity for a four-year period. The Committee dealt with the following substantive items: (a) treaty abuses and treaty shopping; (b) mutual assistance in collecting tax debts; (c) international tax arbitration; (d) earnings stripping; (e) taxation of income derived by participants in development projects; (f) modified permanent establishment definition; (g) revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries; and (h) review and adoption of the revised draft Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

On the basis of the discussion of the above-mentioned topics, the Committee also produced a set of conclusions and recommendations for consideration by the Economic and Social Council, Member States and the United Nations Secretariat.

[11 January 2006]

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Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69, the first session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 5 to 9 December 2005.

2. The first session of the Committee of Experts was attended by 22 tax experts and 64 observers. The following members of the Committee of Experts attended the first session of the Committee: Moftah Jassim Al-Moftah (Qatar), Bernell L. Arrindell (Barbados), Noureddine Bensouda (Morocco), Rowena G. Bethel (Bahamas), Patricia A. Brown (United States of America), José Antonio Bustos Buiza (Spain), Danies Kawama Chisenda (Zambia), Andrew Dawson (United Kingdom of Great Britain and Northern Ireland), Talmon de Paula Freitas (Brazil), Nahil L. Hirsh (Peru), Harry Msamire Kitillya (United Republic of Tanzania), Armando Lara Yaffar (Mexico), Frank Mullen (Ireland), Kyung Geun Lee (Republic of Korea), Habiba Louati (Tunisia), Ronald Peter van der Merwe (South Africa), Dmitry Vladimirovich Nikolaev (Russian Federation), Pascal Saint-Amans (France), Serafin U. Salvador, Jr. (Philippines), Erwin Silitonga (Indonesia), Stig Sollund (Norway) and Robert Waldburger (Switzerland).

3. The session was also attended by observers from Australia, Austria, Azerbaijan, Barbados, Bosnia and Herzegovina, Cambodia, China, Costa Rica, Croatia, Ecuador, Germany, Iran (Islamic Republic of), Israel, Italy, Liechtenstein, Monaco, Morocco, the Netherlands, Panama, Peru, Poland, the Russian Federation, Saint Kitts and Nevis, Spain, Togo, Trinidad and Tobago, Turkey and Viet Nam. In addition there was an observer from the Cayman Islands (Overseas Territory of the United Kingdom).

4. The session was also attended by observers from the following intergovernmental organizations: the Caribbean Community secretariat, the European Commission, the Inter-American Center of Tax Administration (CIAT), the International Bureau of Fiscal Documentation, the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), the Southern African Development Community and the Economic Commission for Europe.

5. The session was also attended by observers from other entities as follows: Associação Comercial de São Paulo, the International Chamber of Commerce, the International Union for Land-Value Taxation and Free Trade, the Tax Justice Network and the Visiting International Faculty Program. The following participants also attended the session in their personal capacity: Philip Baker, Jon E. Bischel, Frank L. Brunetti, David Davies, Ghislain T. J. Joseph, Michael J. McIntyre, Toshio Miyatake, Hans Pijl, Francisco Alfredo Garcia Prats, Dhaval Sanghavi, Ned Shelton and David E. Spencer.

6. The amended agenda for the first session was as follows:

1. Opening of the session by the representative of the Secretary-General (closed meeting).

2. Adoption of the agenda (closed meeting).

3. Election of the Chairperson and Rapporteur of the Committee of Experts (closed meeting).

4. Consideration of rules of procedure and other organizational issues (closed meeting).

5. Designation/confirmation of a steering group of the Committee (closed meeting).

6. Discussion on substantive issues related to international cooperation in tax matters:

   (a) Treaty abuses and treaty shopping;

   (b) Mutual assistance in collecting tax debts;

   (c) International tax arbitration;

   (d) Earnings stripping;

   (e) Taxation of income derived by participants in development projects;

   (f) Modified permanent establishment definition.

7. Revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries.

8. Review and adoption of the revised draft Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.

9. Dates and agenda for the second session of the Committee.

10. Adoption of the report of the first session to be submitted to the Economic and Social Council.

Chapter II
Organization of the session

A. Opening of the session by the representative of the Secretary-General

7. On 5 December 2005, the 1st meeting of the first session of the Committee was opened in Geneva on behalf of the Secretary-General by the Director of the Financing for Development Office of the United Nations Department of Economic and Social Affairs, serving as Secretary of the Committee. Noting the differences between the prior Ad Hoc Group of Experts and the present Committee, he stressed in particular that while the legal status within the United Nations had not fundamentally changed, the Economic and Social Council, in its resolution 2004/69, had changed the reporting lines, mandate and organizational structure, modalities of work and the general political standing of the Committee.

8. Since there had been no change in legal status of the group into an intergovernmental body it was not subject to the formal rules of procedure normally applied to those bodies. Accordingly, for the conduct of its business the Committee had the option to either continue to use the practical or working arrangements of the former Ad Hoc Group of Experts or to establish new ones. Furthermore, while they are nominated by their Governments, experts are appointed by the Secretary-General and serve in their personal capacity. The new Committee reports directly to the Economic and Social Council and may make suggestions and recommendations for the work of the Council in the area of international cooperation in tax matters. Finally, the mandate given to the Committee resolution 2004/69 requires the Committee to:

(a) Keep under review and update as necessary the *United Nations Model Double Taxation Convention between Developed and Developing Countries*[1] and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*;[2]

(b) Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;

(c) Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;

(d) Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition;

(e) Give special attention to developing countries and countries with economies in transition in dealing with the above-mentioned issues.

B. Adoption of the agenda

9. The Committee of Experts approved an amended agenda by consensus, with the addition of an item on arbitration in tax matters to be discussed on the basis of a paper to be furnished by Mr. Saint-Amans.

C. Election of Chairperson and Rapporteur

10. The Secretary of the Committee then drew attention to the organizational matters facing the Committee and asked the members to present nominations for Chairperson. Mr. Bensouda was nominated and was elected by acclamation.

11. To provide continuity, it was decided to elect a Rapporteur and a Vice-Rapporteur each with a one-year term of office commencing at the completion of each annual session of the Committee. Each year the Vice-Rapporteur would automatically succeed to the position of Rapporteur and a new Vice-Rapporteur would be elected. Every third year the Vice-Rapporteur appointed at the end of the session would serve for only the succeeding session unless he or she was reappointed as an expert for another four-year term, in which case he or she would automatically become Rapporteur for the following session.

12. The Chairperson asked for nominations for Rapporteur. Mr. Arrindell was nominated and was elected Rapporteur by acclamation. Mr. Saint-Amans was nominated and elected Vice-Rapporteur by acclamation.

D. Consideration of rules of procedure and other organizational issues

13. After extensive discussion the experts decided to create a Bureau to be composed of the Chairperson, three Vice-Chairpersons, a Rapporteur and a Vice-Rapporteur. The Vice-Chairpersons would serve as Chairperson in the absence of the Chairperson. The experts elected Ms. Brown as First Vice-Chairperson, Mr. Lara Yaffar as Second Vice-Chairperson and Mr. Lee as Third Vice-Chairperson, all by acclamation. The term of office for Chairpersons and Vice-Chairpersons was fixed at two years with the possibility of re-election.

14. The Bureau will be responsible for the coordination and distribution of information to the Committee when it is not in session and for liaison with the secretariat concerning the programme of work of the Committee. It will also be responsible for general supervision of the work of subcommittees and the formulation of a draft agenda for each session based on the work of the subcommittees and in consultation with the full membership of the Committee. Unlike the former Steering Committee of the Ad Hoc Group of Experts, decisions of the Bureau will be subject to confirmation by members of the Committee.

15. The experts agreed to create, as necessary, ad hoc subcommittees composed of experts and observers to work throughout the year under the guidance of the Bureau and with the support of the secretariat to prepare the agenda items and determine the supporting documentation, including requests for papers by independent experts, for consideration at the regular session of the Committee. The subcommittees will in principle work on the basis of electronic communication. However, when the Bureau deems the organization of meetings of a subcommittee necessary for the efficient operation of the Committee it may request the United Nations to provide additional funding as necessary, as well as seeking financial and non-financial assistance from Member States.

16. It was also agreed that while it was desirable to take decisions on the basis of consensus, it was important that there should be full reporting of divergent views.

As a working rule, it was decided that in cases in which it was impossible to achieve consensus, Committee members not in agreement with a decision would be given the opportunity of registering their dissenting views in the report of the Committee's proceedings.

17. The Committee then addressed the issue of observers. It was decided to allow access and participation in Committee discussions to officially designated observers of Governments and intergovernmental organizations. For other observers, it was decided that they could apply to attend the sessions of the Committee and that such requests would be approved on the basis of the "no-objection rule" under the auspices of the Bureau and the secretariat and subject to space limitations. The existing list of observers was approved with the proviso that for the next session of the Committee observers would be accepted only in accordance with the new procedures. Although observers would be allowed to speak, preference should be given to the members of the Committee. The Committee also affirmed its right to choose to meet in closed session on a given topic if the members deemed it desirable.

E. Designation/confirmation of a steering group of the Committee

18. Having decided to create a Bureau, no steering group was designated.

Chapter III

Discussion on substantive issues related to international cooperation in tax matters

A. Treaty abuses and treaty shopping

19. The presenter, Mr. Sasseville, outlined two issues for consideration: Should the Committee begin where the Ad Hoc Group of Experts left off at its 11th meeting, namely with consideration of the proposal to revise the relevant parts of the commentary on article 1 of the Model Convention, or should it address methods of combating treaty abuse? The presenter commented that "treaty shopping", when it could be considered to be an abuse, was only one form of treaty abuse and should not be dealt with as a separate issue.

20. The presenter then outlined the various ways in which countries could address treaty abuses and the issues raised by each of them. One way would be to include specific anti-abuse rules in tax treaties. Another would be to rely on specific anti-abuse rules of domestic law. A third might be to rely on general anti-abuse rules in domestic legislation. A fourth way would be to rely on judicial doctrines developed in the process of interpretation of domestic tax law to counteract abuses of domestic legislation. A fifth way would be to rely on principles of interpretation of treaties to prevent abuses of the provisions of tax treaties.

21. On the matter of the inclusion of anti-abuse provisions in the treaty, experts were of the view that treaty abuse was not adequately dealt with in the text of either the OECD or the United Nations Model Convention.

22. Many experts were of the view that it would be preferable to combat abuse by means of specific rules in the treaty. What constitutes treaty abuse is often a subjective matter and finding objective criteria to determine whether an abuse has been committed is often difficult.

23. It was noted that there was more to the issue of treaty abuse than just the treaty itself and domestic law; consideration must be given to international law and good-faith compliance by the contracting States. In addition, the needs of commerce should be addressed.

24. Experts noted that the United Nations Model Convention was not prescriptive, but rather assisted countries in entering into bilateral treaties by providing illustrative language to be adapted to particular situations. Just as the OECD Model had language in its Commentary dealing with this issue, the Committee might also wish to recommend appropriate language to be added to the United Nations Model. However, there was a need to deal with the difficult question of distinguishing between "fiscal optimization" and "treaty abuse".

25. An observer, citing his experience as a tax administrator, provided examples of a number of potential problems raised by the interpretation of the Model Convention:

(a) The use of contract-splitting to circumvent the time threshold for the existence of a permanent establishment under article 5, paragraph 3, of the United Nations Model. He commented that the Indian courts had designed a disjunctive test to cope with the problem;

(b) The 10 per cent and 25 per cent shareholding thresholds in article 10, paragraph 2, of the United Nations Model and the OECD Model respectively, for source-country dividend withholding tax, which may in practice invite abuse by taxpayers who increase their shareholding percentage prior to dividend distribution in order to qualify for the reduced rate of withholding tax;

(c) Article 13, paragraph 4, of the United Nations Model dealing with the 50 per cent threshold for determining whether immovable property is the principal asset of an entity for the purpose of determining source taxation and the prospective dilution of the value of such property before the transfer of an interest in the entity in order to avoid source-country taxation;

(d) United Nations Model article 13, paragraph 5, concerning a participation threshold for alienation of shares; the use of step transaction time-splitting sales to avoid source-country taxation; and whether "participation" was meant to be direct or indirect;

(e) Possible conduit arrangements for passive income articles. The observer commented that, in addition to paragraph 21.4 of the OECD Model commentary on article 1, the style of anti-conduit arrangement used in the United States was very valuable and could be reflected in the United Nations Model commentaries. In addition, commentary on the limitation of benefit in the OECD Model could also be reflected in the United Nations Model.

26. An expert expressed the view that, in order to avoid some treaty abuse cases, the concept of "beneficial ownership" included in paragraph 2 of articles 10, 11 and 12 should also be inserted in article 13, paragraph 5, in a similar fashion since capital gains from the alienation of shares can be categorized as the same type of investment income as dividends, interest or royalties.

27. Further comments by observers included a concern that broad anti-avoidance treaty provisions might have an adverse effect on commerce and inbound investments. They suggested a more narrow approach.

28. It was noted that one form of abuse occurred where a taxpayer divides functions to avoid the creation of a permanent establishment. However, this could be dealt with by adopting a better definition of "permanent establishment" because, as this provision is currently formulated, it is possible, when combined with domestic law, for a taxpayer to obtain a double exemption from taxation or a double benefit in some cases.

29. Experts and observers expressed concern that, unlike in many OECD countries, by and large anti-abuse legislation in developing countries either did not exist or, if it existed, was not enforced. Therefore, there was a requirement for greater precision in drafting the language of treaties.

30. It was noted that the purpose of treaties was to avoid double taxation and evasion, not to facilitate treaty abuse. For example, if a transaction was split, the purpose of the treaty was thwarted. Treaty rules that used a specific number or percentage were more difficult for tax administrations to enforce. The Committee should consider adopting a broad anti-abuse rule rather than a specific rule and, in this context reference was made to the approach of the United States, which was to determine whether the result of a transaction was consistent with the statute.

31. Many experts were of the view that treaties should be responsive to: (a) economic agents; (b) treaty partners; and (c) the domestic courts. The language in the treaty and the Commentary must address each of their concerns.

32. Some experts also stated that the viewpoint of each country was important. A treaty was a contract between two contracting States; if a treaty was uncertain its purpose would be defeated. To that extent, the use of specific anti-abuse provisions would be the preferred course.

33. An expert, citing his experience as a tax administrator, said that many domestic investors registered in a treaty country so they could get the benefit of the tax incentives in their own country. Therefore, specific provisions should be added to the treaty to prevent domestic investors who registered in a treaty country from obtaining both treaty and domestic incentives for foreign investment.

34. The presenter said that relying exclusively on specific anti-avoidance rules in treaties was very dangerous because those rules could deal only with tax abuses that had been discovered and that adding many specific rules created an expectation that abuses could be addressed only through such rules. He also pointed out that it was important in considering the issue of treaty abuse to balance the need to provide certainty in order to attract investment and the need for tax administrations to prevent abuses. He also pointed out that it was important for tax administrations to be able to address treaty abuses even if no specific anti-abuse provisions included in the treaty were directly applicable.

35. Many experts were of the view that the anti-abuse provisions should be included in the Commentary, which should also contain examples to illustrate situations in which treaty abuse might arise, as this could be of benefit to future negotiators.

36. The Chairperson concluded that the United Nations Model Convention, with its Commentary, was merely a tool for treaty negotiations; therefore the best place for discussion of specific anti-avoidance situations was in the Commentary to the Model Convention.

37. **It was decided that:**

(a) **The issue of treaty abuse needed to be dealt with in the United Nations Model Convention and that this might be addressed in the Commentary as well as in the Convention itself. The Commentary on article 1 of the OECD Model Convention, which addresses methods of combating treaty abuse, would be helpful in this regard. However, it was important to ensure that, in considering the issue of treaty abuse, there was a balance between the need to provide certainty for investors and the need for tax administrations to combat such abuse;**

(b) **Further consideration needed to be given to addressing methods that might be used to combat specific treaty abuse issues. A subcommittee was appointed, to be coordinated by Mr. Lee and to include Mr. Silitonga, Mr. Lara Yaffar, Mr. Zhang, Mr. Garcia Prats and Mr. Sasseville.**

B. Mutual assistance in collecting tax debts

38. The matter of mutual assistance in the collection of tax debts had already been the subject of discussion at the final (11th) meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters. A focus group formed at that meeting had drafted a recommendation for an assistance-in-collection article to be included as article 27 of the Model Convention as well as a proposed Commentary. This draft article was resubmitted to the new Committee of Experts by the presenter, Mr. Sasseville, with a query as to whether the Committee wished to discuss the article as drafted or whether the language of the OECD Model should be adopted instead. The presenter noted that the only difference between the draft article and the OECD Model article was that the draft article provided that only "taxes covered by this Convention" would be subject to the assistance-in-collection provisions, while the OECD Model included "taxes of every kind and description". He expressed the view that it would be to the advantage of developing countries to adopt the wider formulation as they relied more heavily on taxes that were not covered by the provisions of tax treaties, such as the value added tax (VAT).

39. While experts and observers agreed that an article of this nature should be included in the Model Treaty, many noted that such an article might be incompatible with their national constitutions or domestic laws. It was suggested that this could be overcome by noting in the Commentary that not all countries might be in a position to include the article in their negotiated treaties for those reasons.

40. In addition, many developing country experts and observers expressed concern regarding the cost to the contracting State of providing assistance in the collection of taxes, as well as, in the case of some developing countries, the capacity to provide such assistance. An expert noted that in his experience the problem of taxpayers leaving the jurisdiction without paying taxes due has been lessened since his country began including assistance-in-collection provisions in its treaties.

41. Many other experts and observers indicated that cost issues, though real, should not impede the collection of taxes. There must be a balance between cost and the need to combat tax evasion. These issues can be addressed in bilateral negotiations between countries.

42. Many experts noted that in reality an assistance-in-collection provision could be a one-way street and impose a disproportionate burden on a contracting party. For example, the United States receives many enquiries regarding the imposition of countries' VAT, yet the United States has no VAT. On the other hand, some experts felt that this kind of provision has been beneficial to their countries, particularly in developing countries. However, it was also observed that there needs to be a balancing of the tax collection burden between treaty partner countries, particularly between developed and developing countries.

43. The discussion about taxes that should be covered took two lines. The first recommended making the coverage as wide as possible and thus adopting the OECD text, with a footnote pointing out that not all countries might be able to achieve full coverage. An alternative view supported by many developing countries recommended the adoption of the existing draft of article 27, with an annotation or Commentary noting that countries that wished and were able to do so could expand the coverage to include other taxes than those covered in the treaty. It was noted that

this flexibility was desirable because an expansion of the proposed article 27, paragraph 2, could be particularly onerous for small developing States.

44. The presenter suggested that where there were no differences in substance the Committee should adopt language similar or identical to the OECD Model so as to eliminate possible ambiguities in interpretation and noted the need for consistency between the provisions of the Convention dealing with assistance in collection and exchange of information.

45. Many experts noted that the Committee should not be bound by the OECD Model and that one of the objectives of the Committee was to take into consideration the needs of developing countries, which might not necessarily be fully reflected in the OECD Model.

46. Several observations were made regarding the necessity of proposed paragraph 6 of article 27. One concern was the inability of one contracting State to challenge the existence or validity of the claim of the other contracting State. An expert noted that once the requesting country had verified the existence of the tax liability there should be no basis on which to challenge its legal validity or the necessity to collect in the other contracting State.

47. **It was agreed that the proposed draft of article 27 should be adopted in its current form and that the Commentary should contain robust examples of situations where countries could decide to broaden its application.**

48. **The Commentary should reflect the concerns raised by developing countries with respect to such issues as capacity and constitutional and legal difficulties in relation to the proposed article.**

49. **The Committee agreed to appoint a subcommittee to develop proposals for updating article 27 of the United Nations Model Convention. The subcommittee, composed of Mr. Saint-Amans, coordinator, and Ms. Hirsh, Mr. Kitillya, Mr. Salvador, Mr. Kharbouch and Mr. Roccatagliata, will draw up proposals for the next session.**

C. International tax arbitration

50. The presenter, Mr. Saint-Amans, noted that the European Union treaty on multilateral arbitration was now in force, binding member States to conventional multilateral law. It updates provisions for non-legal proceedings and provides that if there is a failure to reach an agreement to eliminate double taxation after two years arbitration becomes automatic. The Commission has a six-month period to provide its opinion. The two contracting States can decide on an alternative solution within a six-month period, after which the arbitration decision becomes binding unless another solution has been found.

51. The presenter suggested that the Committee take a decision to deal with this issue by creating a working group to prepare a Status report for consideration at the next session. He noted the concern that developing countries might lack the resources and expertise available to developed countries, thus creating imbalances in the arbitration process. There was a need for a genuine discussion of the issue within the United Nations. The presenter suggested that there was already support for the inclusion of arbitration provisions in tax treaties and that they could provide

an attractive alternative to legal recourse if they could be implemented at low cost and provide for fair and prompt resolution of disputes.

52. Some experts and observers pointed out that arbitration was only one element in the dispute resolution process and should be regarded as a last resort. There are other alternative methods of dispute resolution, such as mediation, and it was suggested that an analysis of these should be undertaken.

53. There was support from some experts on the suggestion to form a working group, while others suggested that there had been insufficient time to digest the presentation and that it would be more appropriate to gather new information and decide next year to form a working group to report to the Committee in 2006.

54. An observer pointed out that the issue had been discussed at the 10th meeting of the Ad Hoc Group of Experts and was referred for further consideration.

55. Several commentators noted the necessity to view the issue within the context of transfer pricing and advance pricing agreements.

56. **It was decided that Mr. Waldburger, with the assistance of Mr. Dang Minh and Mr. Saint-Amans, would collect all data available on alternative methods for avoiding or solving disputes and that he would also present a summary of the findings at the second session of the Committee.**

D. Earnings stripping

57. The presenter, Ms. Brown, noted that amounts of interest and other payments had been considered acceptable as long as they were at arm's length and consistent with article 9 of the OECD Model. Since its first papers on this issue, OECD has questioned whether article 9 was applicable to thin capitalization issues. Since OECD had not reached a conclusion on earnings stripping, the presenter provided an analysis of a related issue: the treatment of traditional hedging instruments such as forward contracts and swaps in double taxation agreements. The presenter suggested that where these are undertaken in connection with a related business activity, the resulting payment should be treated as business profit (assuming there was no permanent establishment) and should be taxed in the resident's State. She also noted that any income received by the financial institution acting as a broker or dealer in the transactions should be treated in a similar fashion.

58. The presenter pointed to the first four examples in her paper as demonstrating these principles. She then referred to the analysis of a total return equity swap in example 5 as an exception to this principle. Since that investment was not directly related to any business activity of the owner of the contract, the income should not be treated as business income. The annual payments did not meet the definition of income from shares used in this article, and thus the alternative would be to treat them, along with the final settlement on the contract resulting from the capital gain or loss on the shares, as other income under article 21 of the Model Convention.

59. Mr. Waldburger agreed with the principle that income from the use of derivatives to hedge business income should be classified as business income, as supported by the first four examples in the paper. However, he was not convinced that example 5 provided an exception to the principle as it applied to financial services income received by the dealer. He conceded that a total return swap of

equity created the greatest difficulties. It would depend on how the contract was constructed and would depend on whether the financial institution had in fact purchased the stock and had held beneficial interest in the stock purchased on behalf of the investor. It could have simply provided the payment of a sum equivalent to the dividend paid to the investor. Under the United Nations Model the source country could withhold tax on the income, while if it is treated as other income under article 21 of the OECD Model there would be no source-country taxation. Hence, dealer income should be recognized as business income, otherwise the issue becomes too complex. He would prefer to rely on domestic law or on regulations laid down explicitly in the treaty.

60. Experts noted that it was difficult to draft general regulations that fit all situations. It was also pointed out that there was no uniformity in the definition of interest in domestic legislation. It would be useful if the Committee of Experts could provide examples and discussion of the implication of these variations in the Commentary. Problems arising from national definitions of guaranteed fees and interest under Islamic law should also be included. It was suggested that a paper on the general definition of interest and on the role of interest in Islamic sharia would be useful to the Committee.

61. **The presenter pointed out that there were many ways to consider the issues raised in example 5 of the paper without reaching a conclusion. Based on the discussion, the Chairperson asked the presenter to update her paper for the experts. The Committee also invited Mr. Al-Moftah to prepare a paper on the role of interest in Islamic sharia.**

E. Taxation of income derived by participants in development projects

62. The presenter, Mr. Thuronyi, noted the wide variation in the taxation of development projects. These projects often involved exempting from various direct and indirect taxes the transactions undertaken to carry out the project, although the extent of exemption varied significantly depending on the recipient country and the requirements of the donor. While in some countries exemptions were largely embodied in laws of general applicability, in others they were governed by agreements that may not even have been cleared with the country's finance ministry and, in some cases, their legal status is doubtful. The importance of a sound legal basis for the extension of any exemptions was emphasized.

63. Mr. Sollund emphasized the need for recipient countries to develop efficient tax systems based on sound and principled fiscal policies. He stressed that donors ought to encourage and support the development and maintenance of good tax systems in recipient countries rather than undermining them by claiming tax exemptions.

64. Experts recognized that tax exemption was appropriate in some circumstances. An example raised was indirect taxes on the import of goods to be used to provide humanitarian assistance to disaster victims. In other cases, for example construction projects, it was not clear that exemption would necessarily be appropriate. Such projects are more similar to the conduct of normal business within the country, and it was argued that the presumption should be that normal tax rules should apply.

65. It was generally agreed that it was up to the donor to specify whether exemption was required as a condition of granting the aid in question. Experts were of the view, however, that donors might under some conditions be persuaded not to require exemption if they were made more aware of the negative consequences of exemptions and if alternatives to complete exemption were advanced.

66. The alternative of including in the national budget funds to reimburse tax costs was discussed. This was considered a more desirable approach in situations where donors were unwilling to agree to full taxation without reimbursement.

67. The experts noted the change in the policy of the World Bank in 2004 concerning the financing of taxes as part of its loans. They also noted the discussion of the topic of VAT exemptions for donor-financed projects at the March 2005 conference of the International Tax Dialogue. These developments suggest that it may be fruitful to continue to explore this topic, with a view to bringing more specific recommendations to the Economic and Social Council for consideration.

68. It was pointed out that any such recommendations would likely involve a range of options for donors but that the guiding principle should be to minimize the negative effect of donor requirements on the tax systems of recipient countries. Experts noted that this would call for: (a) provisions that are clearly drafted and have a sound legal basis; (b) minimizing the possibility of abuse; (c) minimizing the administrative burden on all parties concerned (donor officials, those executing aid projects and the recipient's officials); and (d) minimizing economic distortions. Further technical work might usefully elaborate guidelines for conditions under which donors might be more willing to limit their requests for exemptions, for the terms in which exemptions might be drafted and for alternative mechanisms to exemption (such as a voucher system).

69. **It was decided that further consideration should be given to the tax regime applied to donor-sponsored development projects with a view to making recommendations to the Economic and Social Council. The IMF representative was requested to present a report to the Committee after consultation in the framework of the International Tax Dialogue.**

F. Modified permanent establishment definition

70. The presenter, Mr. Pijl, addressed the general question of the legal status of a commentary attached to a treaty, with particular reference to the Commentary on article 5 of the United Nations Model Convention. He noted that the Commentary and various interpretations might become contextual with the treaty. However, commentary is not part of a treaty and its purpose is only to aid interpretation. Judges do, however, consider interpretations of commentaries and where one is discredited by a court judgement it can be damaged. If commentaries are to become more useful, the role of judges must be taken into account.

71. The presenter noted that after much work, OECD had updated its article 5 Commentary in 2003, including examples that widened the concept of permanent establishment. He suggested that care should be taken by the Committee not to include in its revision of the Commentary on article 5 statements so drastic that they could easily be rejected by domestic courts.

72. The presenter also drew attention to the OECD Commentary on article 5, paragraph 3, which states, in paragraph 19, that if a general contractor subcontracts parts of a project, the time spent by the subcontractors must be included in the determination of the time spent by the general contractor on a construction site. He concluded from the example that if an entire project was subcontracted, the general contractor would not be deemed to have a permanent establishment. This result seemed to him to be illogical. One observer was of the opinion that the existing OECD language as interpreted by the presenter was in fact logical. Others argued that the presenter's interpretation was incorrect. In view of the above, no conclusion was reached during the discussion.

73. The fourth sentence of paragraph 33 of the OECD Commentary refers to the negotiation of "all elements and details" of agreements by an agent. This raises the question of whether the negotiation of only the essential elements by an agent would still create a permanent establishment. Since such an interpretation could lead to abuse, two non-OECD countries in their observations on the OECD Commentary have taken the position that a permanent establishment exists when an agent negotiates only essential parts of a contract.

74. With regard to "fragmentation", the presenter said that a taxpayer may split activities in such a way as to not be included in the article 5, paragraph 4 (f), definition of permanent establishment.

75. While neither Mr. Pijl nor Mr. Nikolaev proposed revision of the United Nations Model Convention, the presenter suggested that if the Committee were to decide that additional Commentary were required for article 5, he would support the use of the OECD Commentary as a starting point.

76. Mr. Nikolaev supported the position of the presenter, noting that since in his experience judges tended to be conservative, the recommendation of caution in amending the Model Convention was appropriate. He concurred that a good starting point would be the OECD Commentary. As for the treatment of agency raised by the presenter, future work was needed on that issue. He also pointed out that the United Nations Model Convention had wider coverage, including article 5, paragraph 6, on insurance premiums and article 5, paragraph 7, on independent agents. The necessity to consider article 7 on business profits was also raised in connection with any modification of permanent establishment.

77. An observer countered this opinion with the argument that article 5 was badly flawed and should be rewritten because the "corrections" made to the Commentary had limited legal effect. Given that the revision of the permanent establishment article was unlikely, a proposal was made to combine tax treaties with domestic legislation and have provisions of the Commentary adopted under domestic law, since a legislature can always "interpret" a treaty. If the expectation is that domestic courts will interpret article 5 in accordance with the Commentary, a country should guarantee that result by including the interpretation in domestic law. An example of a flaw in article 5 is the inability to tax fishing activities within territorial waters and in some cases extraction activities, owing to misapplication of the permanent establishment concept.

78. Several experts and observers expressed disagreement with the view that article 5 was fundamentally flawed, noting that it had a history of over 75 years. This suggested that there was a certain amount of legal and practical support for it.

From that point of view the article was not flawed; rather, it presented room for improvement. In revising its Model, OECD concluded that while the present definition was not perfect, it was better than the alternative suggestions that had been recommended.

79. Another exception to the position of the presenter considered the use of the term "binding" with respect to the recognition given to commentaries as incorrect. When the commentary is clear, it will have more force. Nevertheless, commentaries can never attain more than persuasive status. When countries differ as to the interpretation of a commentary only the courts can decide. In some countries the judges follow only the words of the statute.

80. In terms of revising the Convention, experts noted that treaties generally exist for periods of 30 to 40 years and as a result provide stability and predictability. However, as times change they may have to be renegotiated and the problem facing the Committee was to find a balance. The Committee could update the United Nations Model and amend the Commentary.

81. Many experts and observers, drawing on their national experience, argued that redrafted commentaries should include examples to provide a better understanding of the definition of permanent establishment. Many agreed that a good starting point would be the existing OECD commentaries that have been recently changed to be, in their view, more source oriented. Not only could examples be given, but issues such as the treatment of the duration of time, such as months versus days, could be clarified. If possible, terms such as "habitual" and "business" could also be clarified. The importance of the source of payment principle was also mentioned. It was noted in this regard that the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*[2] once included such examples.

82. An expert noted that the deletion of article 14 from the OECD Model could result in confusion and that the United Nations Convention should retain its differences from OECD are in order to reflect developing countries' concerns.

83. In response, it was suggested that the deletion of article 14 in the OECD Model has in fact provided clarification of the issue. It was also suggested that the work done by OECD in revising its Commentary should be used when necessary, due attention being given to the main differences between the models.

84. It was also noted that too much detail in describing a permanent establishment may be undesirable since the more precisely a term is defined the easier it will be for taxpayers to circumvent it. Similarly, the inclusion of examples in the Commentary has disadvantages, as taxpayers may seek to argue that if their facts are slightly different from those in the example there would not be a permanent establishment. Many experts and observers commented on the examples given by the presenter. It was suggested that all departures from the Model contained in existing bilateral treaties be collated.

85. **It was decided that:**

(a) **Further consideration needed to be given to this important issue. A subcommittee was appointed to be coordinated by Mr. Sollund and to include Mr. Dawson, Ms. Louati, Mr. van der Merwe, Mr. Pijl, Mr. Levy and Mr. Lasars.**

(b) **The subcommittee would propose improvements in the Commentary on article 5 of the Model, taking into consideration the OECD commentaries. Emphasis would be put on useful examples and on specific needs of developing countries.**

G. Revision of the United Nations Model Double Taxation Convention between Developed and Developing Countries

1. Proposed revision of article 26, Exchange of information

86. On the basis of his analysis of the OECD revision of article 26, the presenter, Mr. Spencer, suggested that the model treaty should also amend its article 26 to include "other taxes" beyond those taxes which are the subject of a double taxation agreement. He noted that this would allow coverage of VAT, which is an increasingly important source of revenue for developing countries.

87. The presenter also noted that the words "foreseeably relevant" had replaced the word "necessary" in article 26, paragraph 1, of the revision of the OECD Model in 2005. The OECD Commentary on this change indicates that the standard of foreseeable relevance is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that treaty partners are not to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In addition, the words "to the administration or enforcement" were added before the words "of the domestic laws" in paragraph 1 of article 26. He suggested that the same change be made in article 26, paragraph 1, of the United Nations Model to expand the coverage of that article.

88. The presenter addressed the concern that as a result of this amendment, information would be made available to oversight bodies that supervise tax administration and enforcement authorities, such as a legislature. He suggested inclusion of a paragraph in article 26 characterizing exchanged information as secret and restricting its use in the recipient State to the enforcement and collection of taxes. The presenter noted further that, in order for information exchanges to be broad, a domestic tax interest requirement should not limit the obligation to exchange of information and suggested addition of appropriate language in article 26 to achieve such a result. Finally, the presenter dealt with the override of bank secrecy and other confidentiality laws in the transmitting State, dual criminality requirements and the type of information that would facilitate automatic reporting.

89. The presenter noted the importance of "effective" information exchange in making the amendments to the Model Convention operational. The concept had received full discussion in the decision of OECD to amend article 26 and it was suggested that it be made explicit in the Commentary.

90. He also noted that "effective" exchange of information could be analysed with reference to the three types of information exchange: on request, automatic and spontaneous. He also drew attention to what he called "de facto" bank secrecy in cases where the transmitting State does not collect the required information or can do so only with substantial delay. To satisfy the condition of "effective" information exchange, countries would have to have automatic domestic collection of information. This would make possible the implementation of automatic exchange.

91. Mr. Silitonga noted that the goals of the Model Convention were to combat tax avoidance and evasion and to reduce the chance of conducting any harmful practice. He noted that discussion might be expanded to treaty abuse, as treaty shopping might be considered as tax avoidance or tax evasion. He agreed that an effective exchange of information was essential to deal with tax evasion and capital flight and suggested that the technical means of exchanging information be moved from the Commentary to the article itself.

92. Mr. Bustos Buiza noted that the principles established in the modified OECD article 26 should be addressed in the United Nations Model. He also noted that the introduction of a double incrimination provision, as proposed by the presenter, could create some problems. He also noted the importance of recognizing the relationship between modifications to article 26 and the OECD Model Agreement on Exchange of Information in Tax Matters. He also noted that since the experts generally agreed on the principle of information exchange, they should concentrate their attention on practical problems of implementation. It was important to recognize the existence of a de facto information gap. Information on procedures in place in different countries would be useful in the pursuit of greater harmonization. The difficulties to be faced can be seen in the recent work of the European Union concerning its Savings Directive.

93. There was general agreement among the experts that solutions were needed to promote the exchange of information. The automatic exchange information was viewed as an important factor. A harmonization of information exchange procedures was also essential.

94. Several experts and observers commended the work of the OECD Global Forum on Taxation on level playing field issues (including the exercise in developing a template setting out the legal frameworks for tax information exchange) as a reference source in considering the broad issue of information exchange. It was noted that a report summarizing the information obtained in the template exercise would be published in March 2006.

95. An observer mentioned that CIAT had developed a Model Agreement for the Exchange of Tax Information to help member countries to combat tax avoidance, evasion and fraud. The Model Agreement constitutes an important source of information that could serve as a reference in updating article 26 of the United Nations Model.

96. An observer welcomed the Committee's attention to effective exchange of information, noting its importance in combating tax evasion and abuse. He outlined four requirements for effective exchange of information:

(a) Good access to domestic information;

(b) Proper legal instruments, including joint conventions on mutual assistance, revision of article 26 of the United Nations Model and other legal documents;

(c) Recognition of practical barriers, such as language differences, time zone differences and different procedures;

(d) Ability to use the information requested when you have it, such as being able to match up the taxpayer with a tax identification number.

97. The observer noted that while it was important to minimize differences between the two models, the United Nations revision should seek to reflect the particular needs of developing countries. In this respect the revision of the Commentary was very important and should recognize the need to be compatible with other harmonization efforts, such as anti-money-laundering measures.

98. An expert noted that strict secrecy legislation in his country made information exchange difficult. However, the country had very strict and comprehensive withholding legislation, which provided a rich source of information that could be exchanged.

99. Another expert noted that many tax systems relied on self-assessment and voluntary compliance and that it would be important to assess the impact of the amendment to article 26 on taxpayer behaviour. Automatic exchange may not be helpful in maximizing voluntary compliance.

100. An observer voiced concern for the rights of the taxpayer and the relationship of article 26 to national legislation on privacy and sharing of information and suggested that it would be appropriate for a taxpayer to be notified when there was a request for information concerning his or her tax affairs.

101. A number of experts cited the need for agreements on information exchange independent of treaties, for example if a requesting country was not a party to a bilateral tax treaty, the information would not otherwise be supplied.

102. An expert from a country that did not collect income taxes noted that the question of information exchange was much broader than tax information and should be treated in another way than through double taxation agreements. A different instrument, such as a multilateral agreement, would be more appropriate, as it would be applied by all countries irrespective of individual country practices in tax matters. While there was support for this position from some experts and observers, others noted that full coverage of bilateral treaties would be the equivalent of a multilateral treaty and might be easier to achieve given the extreme difficulty in negotiating and implementing multilateral agreements.

103. A number of experts noted that, irrespective of the importance of a multilateral agreement, it would be difficult to negotiate one without first amending the Model Convention. It was thus important to set priorities. These might be to first amend the Model and then proceed to a multilateral agreement. It would also be necessary to undertake the practical work of how to make both effective. This latter point was probably not a task for this Committee, but for those who had had actual experience in tax collection.

104. An observer remarked that these agreements were not a panacea and that it was necessary to look at the capacity of the country using the information.

105. The Chairperson summarized the areas to which attention should be given:

(a) Effective exchange as regards necessary and useful information;

(b) The importance of the domestic capacity to absorb information exchanged and the ability to satisfy the interests of all concerned;

(c) Mobilization of information and the impact on the public — an inquisitorial approach should be avoided;

(d) Recognition of the progress made in OECD and its expertise that the Committee may want to emulate on the operational side;

(e) A balanced and symmetrical approach to exchange and recognition of practical problems such as standardization.

2. Report of the Ad Hoc Group of Experts Meeting on Exchange of Information

106. In opening the continuation of the discussion on exchange of information, the presenter, Mr. McIntyre, made two general comments: (a) the United Nations Model Convention had fallen behind the OECD Model in some important aspects and should be amended to catch up or move ahead of it; (b) in addition to amending article 26 of the United Nations Model, the Committee should consider the adoption of a United Nations code of conduct to establish general principles that all Governments should observe. He noted that the Committee now has the authority to advise the Economic and Social Council on this topic.

107. In addition to the general points, the presenter went through each of the changes made by OECD to article 26 of its Model Convention and endorsed most of the proposals. He indicated that an ad hoc group of experts, which the secretariat had convened in New York in late October 2005, had made two important technical points. First, the group suggested that the language in paragraph 1 of article 26 should be changed to make clear that any information that the requesting State believed to be relevant would be exchanged. Second, he suggested that the extension of information exchange to all types of taxes might create problems for some developing countries. The real issue is whether information should be exchanged to prevent tax avoidance and evasion with respect to VAT. The presenter suggested that it would be advisable to refer to VAT in articles 26 and 27 specifically or to provide advice on the matter in the Commentary.

108. The presentation was welcomed by several experts and observers, while some others stressed that it should be taken into account that not all tax jurisdictions have the same interests at stake. The discussion then addressed two kinds of issues: technical issues, such as the wording of the article, and broader issues, such as practical difficulties in exchanging information and the relevance of establishing a code of conduct.

109. As regards the wording, different views were expressed on whether "foreseeably relevant" was more valuable wording than "may be relevant". It was indicated that one country had opted for "may be relevant", while another, after hesitation, decided to stick to the updated OECD wording. It seemed that further consideration needed to be given to clarifying the wording before a decision was taken to update this language in article 26.

110. The question on the extension of article 26 to cover taxes not explicitly mentioned in article 2 of the Model Convention was also thoroughly discussed. Many experts and observers stressed the need for such an extension. VAT has become one of the predominant sources of revenue for States. Therefore, the existing income tax treaty network should be used to extend information exchange to such taxes. Some experts and observers disputed that approach and others wondered whether it would be preferable to list taxes that may be covered (as suggested by the presenter) or to make a reference in article 2 to article 26 or to use the OECD wording.

111. As regards double incrimination, an expert noted that there was no need for any such wording in tax treaties unless information exchange was limited to cases of fraud. It was also pointed out that the exchange of information can be bilaterally agreed without concluding a full tax treaty (examples were provided).

112. The practical issues raised by experts and observers included the problem of costs, especially for developing countries, the problem of the actual format of the exchange and the status of limitation.

113. Finally, a more general discussion took place on the goals and the work the Committee could achieve in this field. Following up on the presentation, some observers expressed the view that the United Nations group was a relevant forum in which to address this issue. Emphasis could then be placed on issues relating to the creation of a level playing field that could result in a code of conduct. It was also said that, beyond the work carried out by OECD as well as by CIAT, the Committee could achieve ambitious goals. Some experts and observers argued that the Committee must consider all points of view and that the work should reflect the different interests at stake.

114. Some observers highlighted the need for cooperation in that field. Others advocated the need to consider taxpayers' rights.

115. **A consensus emerged that the Committee should set up a subcommittee to address two issues:**

(a) **Proposing language to update the Model and the Commentary on article 26;**

(b) **Presenting the status of the work on practical issues of implementation made in the area by other international organizations and making proposals on follow-up action.**

116. **The Committee agreed to create a subcommittee coordinated by Mr. Bustos Buiza and including Ms. Bethel, Ms. Brown, Mr. Waldburger, Mr. Al-Moftah, Mr. Nikolaev and Mr. McIntyre. As in the case of the other subcommittees, assistance will be requested as required from international organizations. OECD, the European Union and CIAT were asked to provide assistance and knowledge to support the subcommittee.**

H. Review and adoption of the revised draft Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

117. The presenter, Mr. Brunetti, reviewed the composition of the current draft Manual, as well its origin, structure and purpose. The presenter suggested that while the Manual contained useful information, the introduction was too complex and should be shortened. The historical overview was too detailed and required revision. The observations found in part two of the Manual, if kept, needed to be updated and should not restate the Commentary. The annexes had out-of-date references that needed to be updated. The presenter made a number of other suggestions, including adding a glossary and inserting version numbers and dates.

118. The presenter suggested that the Manual contain examples, illustrations and case studies to assist in treaty negotiations. Publication on the Internet was proposed.

119. One observer noted that the present Manual was too complex and that it would be very difficult to make it simple yet accurate. He was also concerned about the "official status" of the Manual.

120. **The Chairperson proposed that Mr. Brunetti consult with Mr. Lara Yaffar, Ms. Ayala and Mr. Liao and prepare a shorter revised version of the Manual for the next session. After receiving the revised document, the Committee would decide on how to proceed.**

Chapter IV
Dates and agenda for the second session of the Committee

121. Before proceeding with the agenda it was agreed to discuss procedures and rules for determining the agenda of the second session of the Committee, to be held in 2006.

122. The Bureau opened the discussion proposing an indicative agenda prepared and presented by Ms. Brown, as follows:

1. Mutual treaty abuses (4 hours).
2. Assistance in the collection of taxes (2 hours).
3. Definition of permanent establishment (6 hours).
4. Taxation of development projects (1 hour).
5. Exchange of information (6 hours).
6. Revision of the *United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* (1/2 hour).
7. Dispute resolution (2 hours).
8. Definition of interest (1 hour).
9. Adoption of the report (4 hours).

123. Some other items were proposed by experts and observers, such as:

(a) Legal status of the United Nations Model given the fact that the Committee now reports to the Economic and Social Council;

(b) Choices to be made on the update of the Model Convention;

(c) Recent developments;

(d) Tie-breaking rule for the residence of companies;

(e) Visiting teacher article.

124. **The agenda of the second session will be finalized by the Bureau on the basis of proposals from members of the Committee during the session as well as from further proposals that they may communicate to the secretariat by the end of February 2006.**

Chapter V

Adoption of the report of the first session to be submitted to the Economic and Social Council

125. The Committee approved and adopted the present report for submission to the Economic and Social Council.

Chapter VI
Conclusions and policy recommendations

Treaty abuse

126. **The issue of treaty abuse needs to be dealt with in the United Nations Model Convention and this might be addressed in the Commentary as well as in the Convention itself. The Commentary on article 1 of the OECD Model Convention, which addresses methods of combating treaty abuse, would be helpful in this regard. However, it is important to ensure that, in considering the issue of treaty abuse, there is a balance between the need to provide certainty for investors and the need for tax administrations to combat such abuse.**

127. **Further consideration needs to be given to addressing methods that might be used to combat specific treaty abuse issues. A subcommittee was appointed, to be coordinated by Mr. Lee and to include Mr. Silitonga, Mr. Lara Yaffar, Mr. Zhang, Mr. Garcia Prats and Mr. Sasseville.**

Mutual assistance in collecting tax debts

128. **A subcommittee composed of Mr. Saint-Amans, coordinator, and Ms. Hirsh, Mr. Kitillya, Mr. Salvador, Jr., Mr. Kharbouch and Mr. Roccatagliata will develop proposals for updating article 27 of the Model Convention to be discussed at the next session.**

Dispute resolution

129. **Mr. Waldburger, with the assistance of Mr. Dang Minh and Mr. Saint-Amans, will collect all data available on alternative methods for avoiding or resolving disputes. He will present a summary of the findings at the second session of the Committee.**

Taxation of development projects

130. **Further consideration should be given to the tax regime applied to donor-sponsored development projects. The IMF representative was requested to present a report to the Committee after consultation within the framework of the International Tax Dialogue.**

Definition of permanent establishment

131. **Further consideration needs to be given to this important issue. A subcommittee coordinated by Mr. Sollund and to include Mr. Dawson, Ms. Louati, Mr. van der Merwe, Mr. Pijl, Mr. Levy and Mr. Lasars will propose improvements in the Commentary on article 5 of the Model, taking into consideration the OECD commentaries. Emphasis will be put on useful examples and on specific needs of developing countries.**

Exchange of information

132. **A subcommittee coordinated by Mr. Bustos Buiza and including Ms. Bethel, Ms. Brown, Mr. Waldburger, Mr. Al-Moftah, Mr. Nikolaev and Mr. McIntyre will prepare a report proposing language to update the Model**

and the Commentary on article 26 and presenting an analysis of the work carried out on this issue by other international organizations with proposals on follow-up action. Like the other subcommittees, assistance will be requested as required from international organizations.

Revision of the Manual

133. Mr. Brunetti, in consultation with Mr. Lara Yaffar, Ms. Ayala and Mr. Liao, will prepare a shorter, revised version of the Manual for the next session. After receiving the revised document, the Committee will decide on how to proceed.

Assistance and consultation

134. The relevant international organizations should be asked to provide their expertise and knowledge in support of the work of the Committee and its subcommittees.

135. The subcommittees should send their draft papers to the secretariat by the end of September 2006. The secretariat will then circulate them to the members of the Committee for consultation. The Committee will then decide on the appropriate further dissemination.

136. The agenda of the next session will be finalized by the Bureau on the basis of proposals from members of the Committee during the session as well as from further proposals that they may communicate to the secretariat by the end of February 2006.

137. The second session of the Committee will be held in Geneva from 4 to 8 December 2006.

Financing of the Committee and subcommittees

138. In order to deal with issues relating to the agenda on a continuous basis, subcommittees should use electronic communications where possible. However, the efficient operation of these subcommittees may in future require some face-to-face meetings. The Committee requests that funding for such meetings should thus be included in the next budget covering the operations of the Committee.

139. To the extent that resources allow, the Committee will continue to organize training workshops for developing countries as part of its work to meet its mandate to provide capacity-building and technical assistance. Several members have requested workshops, and Viet Nam has offered to host a workshop in 2006. This work might also require additional provisions in the Committee's budget.

140. **To supplement regular budget resources, the Committee will request the United Nations to establish a trust fund to receive contributions from Member States and other institutions interested in providing financing for the Committee's activities in supporting international cooperation in tax matters.**

Notes

[1] United Nations publication, Sales No. E.01.XVI.2.

[2] ST/ESA/PAD/SER.E/37.

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